

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1766-20

A.A.D.,¹

Plaintiff-Respondent,

v.

O.O.,

Defendant-Appellant.

Submitted May 9, 2022 – Decided May 19, 2022

Before Judges Mayer and Natali.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Warren County,
Docket Nos. FV-21-0242-21 and FV-21-0247-21.

Joseph S. Scura, attorney for appellant.

Respondent has not filed a brief.

PER CURIAM

¹ We use initials to protect the identity of the victim and to preserve the confidentiality of these proceedings. R. 1:38-3(d)(10).

Defendant O.O. appeals a final restraining order (FRO) issued against him in an action brought by plaintiff A.A.D. under the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35. Before us, defendant argues that there was insufficient evidence to support the court's issuance of the FRO. He also claims that a provision in the FRO excluding him from the residence he previously shared with plaintiff improperly extinguished his leasehold interest in the property. We reject defendant's arguments and affirm.

I.

In 2018, defendant met plaintiff and began subletting her a room in a farmhouse where he was living. Later that year, they entered an "on and off" dating relationship. In August 2020, plaintiff and defendant each filed a domestic violence complaint against each other. The following month, they withdrew those complaints and entered an "agreement to enter civil restraints." Among other provisions, that agreement provided that if plaintiff "files for a [temporary restraining order (TRO)] against [defendant]" or "files criminal charges against [defendant]," she would "permanently remove herself" from the farmhouse.

On October 26, 2020, plaintiff filed a second domestic violence complaint and obtained a TRO after alleging defendant committed predicate acts of

criminal coercion, false imprisonment, contempt of a domestic violence order, assault, and harassment. Plaintiff's complaint primarily focused on events occurring on September 27 and 28, 2020, when the parties stayed at a friend's house in Virginia and traveled home, making several stops along the way. Defendant also obtained a TRO after he filed a complaint against plaintiff in which he alleged plaintiff committed predicate acts of assault, criminal mischief, and harassment based on five separate acts on five different dates.

The parties proceeded to trial before Judge Robert B. Reed on their cross-complaints. Plaintiff testified that on the Virginia trip, defendant demanded she prepare a written document repudiating any prior statements she had made about defendant being abusive. She stated that defendant threatened to obtain a TRO against her and have her removed from their residence if she did not comply, and that defendant's efforts intensified throughout the trip.

Plaintiff also testified that early in the morning of September 27, 2020, defendant threatened to leave her in Virginia if she did not write the statement, and proceeded to throw her into the headboard of their bed, causing her to injure her head. She also maintained that defendant then attempted to drive away without her, but she was ultimately able to enter defendant's vehicle. A physical

struggle commenced where defendant grabbed her by her face and arm and restrained her.

Plaintiff stated she and defendant proceeded to drive to Richmond, Virginia, where another argument ensued. She testified defendant threw her phone out of his vehicle and locked the doors when she went to retrieve the phone. She further stated that she reached into defendant's open window, at which point he rolled it up, pinning her arm and causing a bruise. Plaintiff also testified that while at a rest stop in Maryland, defendant again threatened that he would not drive her home if she did not write the statement exculpating him.

Plaintiff submitted into evidence several photographs taken after the trip depicting bruising on her face, arms, and legs, and a scratch on her face. She described that most of the bruising was caused when defendant restrained her.

Defendant also testified and disputed plaintiff's testimony. He specifically denied throwing plaintiff into the headboard, restraining her in his vehicle, and pinning her arm in his vehicle's window. Defendant acknowledged that he might have accidentally poked plaintiff's eye, but denied causing plaintiff any other injuries, and suggested that she might have inadvertently bruised herself while horseback riding or caring for the farm animals.

Defendant also presented several text messages and an audio recording in which plaintiff admitted defendant had not committed acts of domestic violence against her. When asked about those statements, plaintiff explained that "at that point in [their] relationship . . . [her] options were to either go along with what he was saying and not really resist too much or risk losing [her] home."

After the conclusion of defendant's testimony, Judge Reed granted plaintiff a FRO and dismissed defendant's complaint, a ruling defendant has not challenged on appeal. In his oral decision, the judge expressed his reservations regarding the credibility of both plaintiff and defendant. In this regard, Judge Reed stated defendant's "orchestration of events, . . . scripted complaints[,] and manipulation of conversations which he knows he is recording all tend to put his credibility in question."

As to plaintiff, the judge observed her "admission of invention and falsification of allegations" and inconsistent testimony undermined her credibility. Judge Reed explained that he was "tempt[ed] . . . to conclude that both parties ha[d] testified to a material degree of falsity, and the principle of false in one, false in all should be applied," but "cho[se] not to do that" based on his "weighing the circumstances of the entire relationship" and "applying some degree of common sense."

Judge Reed then applied the two-part test detailed in Silver v. Silver, 387 N.J. Super. 112, 125-26 (App. Div. 2006).² As to the first prong, the judge concluded that "the corroborative evidence of [plaintiff's] version of the course of events is sufficient to meet her burden to establish assault and harassment as predicate acts under the [PDVA]." The court also concluded that plaintiff failed to establish defendant committed the other pled predicate acts of criminal coercion, false imprisonment, and contempt of a domestic violence order.

Judge Reed explained that plaintiff's photographs depicting her bruising, including "a significant black eye," were "frankly too much evidence and corroboration of [plaintiff's] version of events to be ignored or explained by" the possibility that the injuries might have been "suffered accidentally or inadvertently." The judge stated that it "does not make sense that those injuries were not the result of assaultive conduct as [plaintiff] ha[d] testified." Further, he determined that plaintiff had established a predicate act of harassment based on defendant's "threats to leave [plaintiff] abandoned on the side of the road and

² Under Silver, the court must "first, . . . determine whether the plaintiff has proven, by a preponderance of the credible evidence, that one or more of the predicate acts set forth in N.J.S.A. 2C:25-19a has occurred." Silver, 387 N.J. Super. at 125. "The second inquiry . . . is whether the court should enter a restraining order that provides protection for the victim." Id. at 126.

the threat to file a [r]estraining [o]rder unless she wrote out a recantation," explaining that "when viewed through the lens of the actor," those threats were "intended to intimidate seriously."

Judge Reed also concluded plaintiff satisfied the second Silver prong. He explained that there existed a "clear necessity for restraints against future acts of domestic violence" based on defendant's history of assaultive behavior.

Judge Reed next determined that defendant would be barred from the farmhouse. He explained that he was "hesitan[t]" to "displace [defendant] from a residence which he ha[d] occupied for some significant period of time," but reasoned "it is not this court which displaces [defendant], but rather his conduct," and "[t]o permit him back to the premises . . . would require the de facto removal of [plaintiff]." Judge Reed stated that he was "without the power to accomplish that anomalous result," explaining that it would require "removing the victim of the domestic violence for reasons outside the court's consideration of the matter before it." After amending the FRO to correct a clerical error, this appeal followed.

II.

Defendant argues first that Judge Reed's conclusion that plaintiff had established each Silver prong was not supported by substantial credible

evidence. He claims that in light of the judge's finding that plaintiff "had been untruthful and had fabricated . . . allegations against [him]," it was erroneous to conclude that he "had intentionally caused the bruises on [plaintiff] or that she [was] in danger of 'further abuse.'" Defendant asserts further that "[i]t was not incumbent on [him] to prove a different cause of [plaintiff's] bruises," and that "[t]here is no evidence in the record that [he] ever intentionally hit or injured [plaintiff]." We find these arguments unpersuasive.

As an initial matter, we note that defendant failed to include any of plaintiff's exhibits in his appendix, explaining in a footnote that "[plaintiff] did not present [her] exhibits . . . for marking at trial, so [defendant] has not included them in the [d]efendant's [a]ppendix."

Our Rules provide that "[t]he record on appeal shall consist of all papers on file in the court . . . below," and "shall contain . . . such . . . parts of the record . . . as are essential to the proper consideration of the issues, including such parts as the appellant should reasonably assume will be relied upon by the respondent in meeting the issues raised." R. 2:5-4; R. 2:6-1. Here, defendant was obligated to provide plaintiff's trial exhibits in his appendix because they were in the trial record and because Judge Reed relied specifically on those exhibits in deciding to issue the FRO.

Considering this significant procedural deficiency, we could decline to consider defendant's arguments. See Cmty. Hosp. Grp., Inc. v. Blume Goldfaden Berkowitz Donnelly Fried & Forte, P.C., 381 N.J. Super. 119 (App. Div. 2005) ("[W]e [are not] obliged to attempt review of an issue when the relevant portions of the record are not included."). In the interests of a thorough and complete appellate review of the issues before us, we have nevertheless decided to address defendant's arguments on the merits.

Our scope of review with respect to a court's factual findings supporting the entry of a FRO is limited. Cesare v. Cesare, 154 N.J. 394, 411 (1998). We accord substantial deference to family judges' findings of fact because of their special expertise in family matters. Id. at 413. That deference is particularly strong when the evidence is largely testimonial and rests on a judge's credibility findings. Gnall v. Gnall, 222 N.J. 414, 428 (2015). We will "not disturb the 'factual findings and legal conclusions of the trial judge unless [we are] convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice.'" Cesare, 154 N.J. at 412 (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co., 65 N.J. 474, 484 (1974)).

A person commits harassment "if, with purpose to harass another," he or she: (a) "[m]akes, or causes to be made, one or more communications anonymously or at extremely inconvenient hours, or in offensively coarse language, or any other manner likely to cause annoyance or alarm;" (b) "[s]ubjects another to striking, kicking, shoving, or other offensive touching, or threatens to do so;" or (c) "[e]ngages in any other course of alarming conduct or of repeatedly committed acts with purpose to alarm or seriously annoy such other person." N.J.S.A. 2C:33-4(a) to (c). An individual commits assault "if the person: (1) [a]ttempts to cause or purposely, knowingly or recklessly causes bodily injury to another; or (2) [n]egligently causes bodily injury to another with a deadly weapon; or (3) [a]ttempts by physical menace to put another in fear of imminent serious bodily injury." N.J.S.A. 2C:12-1(a)(1) to (3).

Reviewing the record through the prism of these legal principles, including the two-part Silver test, we are satisfied that Judge Reed's issuance of the FRO was supported by substantial credible evidence in the record. The judge's credibility findings — in which he accepted portions of plaintiff's version of events over defendant's competing testimony — were comprehensive and detailed and are entitled to our deference. See Gnall, 222 N.J. at 428.

As Judge Reed explained, plaintiff's photographs depicting her injuries, paired with her testimony explaining how defendant caused those injuries, supported the predicate act of assault, and her testimony regarding defendant's threats to abandon her and obtain a restraining order against her supported the predicate act of harassment. Plaintiff's testimony also supported the judge's finding that defendant engaged in prior acts of domestic violence and there was a need to protect plaintiff.

Defendant's arguments to the contrary are unavailing. First, simply because Judge Reed found aspects of plaintiff's testimony not credible did not preclude him from crediting other portions. Indeed, it is within a judge's discretion to accept parts of a witness's testimony, while rejecting others. E&H Steel v. PSEG Fossil, LLC, 455 N.J. Super. 12, 29 (App. Div. 2018); see also McDevitt v. Bill Good Builders, Inc., 175 N.J. 519, 531 (2003) (discussing the factfinder's responsibility "to ascribe the weight to be given to th[e] evidence").

Second, contrary to defendant's arguments, Judge Reed did not find that defendant "intentionally hit or injured plaintiff," nor was such a finding necessary to support his decision, as assault requires only that the actor "recklessly cause[d] bodily injury to another." N.J.S.A. 2C:12-1(a)(1). Further, even if Judge Reed's finding that defendant assaulted plaintiff was in any way

factually or legally unsupportable (and we conclude it was not), such a determination would have no effect on his finding that defendant committed the predicate act of harassment, as that determination is amply supported by the record.

III.

In his second point, defendant argues Judge Reed committed error by prohibiting him from the parties' shared residence. He claims that by excluding him from the property, Judge Reed "effectively extinguished [defendant's] leasehold interest in violation of [N.J.S.A.] 2C:25-29(b)." Defendant also asserts that because plaintiff was his subtenant, her "rights as a subtenant [were] completely derived from [his] rights as a tenant . . . and termination of [his] leasehold interest necessarily destroys [plaintiff's] sublease interest." Finally, defendant claims Judge Reed's decision to exclude him from the residence was an abuse of discretion "given [plaintiff's] documented wrongdoing[,] . . . the existing civil restraint agreement[,] . . . and . . . the parties' prior relationship history." We disagree.

"Upon a finding of domestic violence, the PDVA makes available expansive remedies 'designed for the protection and safety of the victim.'" J.D. v. M.A.D., 429 N.J. Super. 34, 45 (App. Div. 2012) (quoting Finamore v.

Aronson, 382 N.J. Super. 514, 519 (App. Div. 2006)). "The broad range of relief available to a trial court is designed to effectuate the remedial nature of the Act, which is to be liberally construed to achieve its salutary purposes." Ibid. (quoting Finamore, 382 N.J. Super. at 519-20). The PDVA explicitly authorizes several forms of relief, including:

An order granting exclusive possession to the plaintiff of the residence or household regardless of whether the residence or household is jointly or solely owned by the parties or jointly or solely leased by the parties. This order shall not in any manner affect title or interest to any real property held by either party or both jointly.

[N.J.S.A. 2C:25-29(b)(2).]

Here, Judge Reed did not abuse his discretion in ordering that defendant be excluded from the parties' shared residence, as such an order is clearly and unambiguously authorized by N.J.S.A. 2C:25-29(b)(2). Defendant's arguments to the contrary are without merit.

First, the FRO did not extinguish defendant's interest in the property as it did not affect the legal status of his lease agreement. Indeed, nothing would prevent defendant from regaining possession of the residence should plaintiff vacate the farmhouse, or assigning his interest to a third party.

Second, to the extent defendant argues Judge Reed erred by refusing to enforce the terms of the parties' "agreement to enter civil restraints," we

disagree, as certain provisions of that agreement constituted an impermissible conditional dismissal of the parties' prior domestic violence complaints. See J.S. v. D.S., 448 N.J. Super. 17, 21-22 (App. Div. 2016) (explaining that "courts must ensure dismissal [of a domestic violence complaint] is not part of an impermissible swap of promises."); Supreme Court of N.J. & Attorney Gen. of N.J., New Jersey Domestic Violence Procedures Manual, 71 (2022). ("The conditional dismissal of a domestic violence TRO or FRO is prohibited.")

In sum, we are satisfied that Judge Reed's decision is supported by substantial credible evidence in the record and is consistent with applicable law. To the extent we have not specifically addressed any of defendant's arguments, it is because we have concluded any such contention was of insufficient merit to warrant discussion in a written opinion. See R. 2:11-3(e)(1)(A),(E).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION